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QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS

QUESTION OF THE REALIZATION OF THE RIGHT TO DEVELOPMENT

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement submitted by the Union of Arab Jurists, the General Arab Women's Federation and the World Movement of Mothers, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[20 February 1997]

Embargoes and the right to development

1. What are these embargoes which have caused so many tears to be shed and condemned millions of human beings to starvation, suffering and covert genocide throughout the ages and throughout the world? The concept of an embargo, which comes from the Latin word imbarricare, dates back to, and indeed forms part of the history of, the Middle Ages. At that time, the embargo, like the blockade, was the principal means of settling commercial rivalry between the major Powers. By using and abusing the embargo weapon, which often led to a total blockade, the colonial Powers of the eighteenth and nineteenth centuries sought to do themselves "private justice" solely on the basis of their views of justice and considering their interests alone.

2. Over the years, economic enforcement measures have become a fearsome weapon in the hands of the Western countries, notably the United States of America, and have constantly been used in a unilateral fashion to preserve their strategic zones, known as "vital interest" zones, with the aim of strengthening their economic and military power in the world.

3. In the context of the East-West confrontation, the embargo became a cold-war instrument against States supporting socialism. What a conception of democracy! The economic coercion and political pressure - exerted previously against the East European countries and now against weak and developing countries whose political views are displeasing to the Western democracies - deliberately violate the fundamental principle of international law: the self-determination of peoples.

4. Ironically, in the name of the United Nations, an instrument for peace, development and international cooperation, embargoes are multiplying and becoming a favoured weapon for settling disputes around the world, in which the civilian populations are the humiliated victims.

5. According to eminent specialists in international public law and prominent persons from many countries, an embargo, like a blockade, violates the rules of international law, collective morality and the political conduct of States in friendly relations based on respect for the principle of the equal rights of peoples. The tendentious interpretation of the Charter of the United Nations opens the door to the discretionary and often arbitrary power of States; it gives cruel and blind rein to reprisals, and makes violent measures possible, as Professor Sebert has stated.

6. Regardless of its implications in the collective life of peoples, the embargo is and always will be a major challenge to the principles of the Charter and to the Universal Declaration of Human Rights. Its application is unlawful and condemnable since it now represents a form of reprisal, a retaliatory measure and a means of coercion exercised by one or more States out of a desire for revenge and designed to jeopardize the sovereignty of another State.

7. It is with justified concern that progressive public opinion constantly questions the validity of the action of the Security Council. Was the International Court of Justice consulted? And was its legal opinion sought in the process of adopting resolutions which authorized war to be unleashed against Iraq and decreed the cruellest of embargoes against its people, followed by the embargo against the people of Libya? As far as we know, the International Court of Justice was not consulted. It was left in the background in the search for a peaceful solution to the conflict, a solution which has had serious consequences for international peace and security, whereas under the terms of the Charter the Court is a fully-fledged organ of the United Nations.

8. In the authoritative opinion of specialists in this subject, the circumstances in which the resolutions were adopted prompt the view that the Security Council seriously impeded the independent exercise of the judicial function of the Court. That an organ vested with primary, but not exclusive, responsibility for the maintenance of international peace and security

(Charter, Art. 24, para. 1) should have prevented the Court from performing its role would appear to be manifestly incompatible with the spirit of the Charter.

9. Under Article 92 of the Charter, "The International Court of Justice is the principal judicial organ of the United Nations"; in other words, the Court alone is responsible for fully exercising its control over legal questions. "The Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court" (Charter, Art. 36, para. 3).

10. In the present case, there was undoubtedly action ultra vires. How can one interpret otherwise the way in which the Council adopted its resolutions without respecting the framework established by the Charter and under relentless political pressure from the major Powers, especially the United States and the United Kingdom? It thus departed from the path of law and exceeded its competence.

11. At a time when international law is confronted with the major challenge of the globalization of the economy and its markets, and when the United Nations is called upon to intervene more often in explosive conflicts all over the world, the credibility of the Organization depends, more than ever, on the International Court of Justice; furthermore, the role of the Court is to apply the principles of law, without submitting to political bargaining. If the highest judicial body in the world were to fail, the United Nations would simply become an instrument for the legitimization of the law of the strongest, and hence of the economic and military Powers, which invoke the law in order to conceal their arbitrary acts more effectively and, without a qualm, sacrifice scapegoats on the altar of the so-called new world order.

12. For example, the imposition of the embargo against the Libyan Arab Jamahiriya by the United States and the United Kingdom through Security Council resolutions in the name of the concept of a "terrorist State", while refusing to admit the idea of "State terrorism", constituted a scandalous arbitrary act.

13. According to the authoritative opinion of Professor Charvin in Cahiers Nord-Sud, "this aggression against the Libyan Arab Jamahiriya has numerous causes: it came into being with the expulsion of the American bases from Libya after the 1969 revolution; it developed with the role played by Libya within the group of oil-producing countries in 1973-1974 in forcing a very substantial increase in barrel prices, thereby causing what in the West was called 'the first oil shock'".

14. It should also be noted that the American military intervention of 1986 and the bombing of Tripoli, the capital, and Benghazi, which caused numerous casualties and destroyed buildings housing civilians, in the name of the fight against "terrorism", preceded by two years the Lockerbie explosion, for which the responsibility of the Libyan State has not been proved. Irrespective of their motivation, and wherever they occur, acts of war are contrary to international law.

15. By its resolution 748 (1992) of 31 March 1992, the Security Council condemned the Libyan Arab Jamahiriya to international isolation and ordered the embargo against it and the complete air boycott, together with the prohibition of arms sales and the reduction of diplomatic personnel, on the basis of the claims adduced by the accusing parties. The latter did not bring the matter before the International Court of Justice for a peaceful settlement, and the ultimatum addressed to the Libyan State therefore has a legally doubtful basis.

16. However, under the terms of resolution 883 (1993) of 5 December 1993, the Security Council decided to freeze Libyan assets abroad, including the amount of the "prize" awarded to indigenous peoples around the world on the occasion of the five hundredth anniversary of the conquest of the Americas. These economic enforcement measures aimed at destroying the blockaded country have caused a shortage of essential oil industry equipment and of aircraft spare parts and, lastly, doomed the people to enormous economic difficulties.

17. It is in Iraq that the embargo has, through its size and its perverse effects, taken on its most dramatic and most criminal form. History is repeating itself: the Iraqi people, like the aboriginal peoples of the Americas, are the victims of their own riches, which are coveted by all. This demonstrates that the Gulf war, "Operation Desert Storm", which was unleashed on the pretext of a territorial dispute inherited from colonial times, was underlain by the strategic interests of the West, in other words, the powerful transnational corporations.

18. The resolutions adopted by the Security Council [661 (1990) of 2 August 1990 and 678 (1990) of 28 November 1990], which imposed very severe economic sanctions on Iraq and then authorized the use of armed force, are merely a cloak hiding the implacable determination of the United States to bring Iraq to its knees because of its huge oil riches. According to official sources, Iraq possesses 300 billion barrels a day of reserves as opposed to Saudi Arabia's 270 billion.

19. Despite a modern war of such intensity, the Security Council, through resolution 687 (1991) of 8 April 1991, imposed on Iraq extremely harsh sanctions aimed at the dismantling of the State, the annihilation of its sovereignty and the utter humiliation of its people. As a result, the continuously extended blockade has had devastating effects on civilian facilities such as power stations, water purification plants, hospitals, schools and communication networks, and has forced Iraq back to pre-industrial times. There can be no doubt that the States which committed aggression against Iraq perpetrated serious violations of Article 2, paragraphs 3 and 4, of the United Nations Charter, under which States shall settle their disputes by peaceful means and refrain from the threat or use of force against the territorial integrity or political independence of any State.

20. After two almost apocalyptic wars and six years of cruel embargo, Iraq today is a defenceless country, with a third of its population surviving in conditions of extreme poverty. In this country, a "cold genocide" is being perpetrated under the guise of international law and before the collusive eyes of the international community.

21. In 1991, a team of experts in law and public health from Harvard University (United States) visited Iraq and reported that the number of children who had died as a result of the war and the embargo was 50,000. Five years later, UNICEF put the number of dead children at 560,000. Today, 500 children are dying of disease and sickness every day and 2.5 million are threatened with malnutrition.

22. At the end of February 1997 the embargo was still in force, following periodic votes by the Security Council, which demands more and more conditions that are incompatible with the spirit of its own resolutions. Thus the Council has become a diabolical instrument, designed to annihilate a whole blockaded nation for such time as the economic and military Powers deem this advisable.

23. The international community has rarely witnessed such an implacable interpretation of Security Council resolutions, under the pressure of the United States, which, in the name of the "law", is condemning 18 million people to a lingering death from starvation and disease.

24. In view of the seriousness of the food and health situation of the Iraqi people, the Security Council, pursuant to its resolution 986 (1995) of 14 April 1995, known as the "oil for food" resolution, authorized the import of petroleum and petroleum products originating in Iraq, and financial transactions worth a total of 1 billion dollars every 90 days, subject to the following conditions: (a) supervision of each purchase of petroleum and petroleum products by the Committee established under resolution 661 (1990); (b) payment of the full amount of purchases directly by the purchaser into the escrow account; (c) the funds deposited in the escrow account to be used by the Secretary-General as follows: a sum of $130-150 million to be used to meet humanitarian needs in three Iraqi provinces and $300 million to be paid into the Kuwait Compensation Fund; (d) the balance to be used to finance the expenses of inspectors and accountants, the costs of the Special Commission and the fees of the Committee established by resolution 661 (1990).

25. It was with indignation that the Iraqi people refused to submit to this humiliation, considering that Iraq is a sovereign State and not a refugee camp. What have the people of the West gained through the war and cruel and inhuman sanctions? Nothing, but the warmongers have brought upon themselves only the resentment of the Arab world.

26. The economic, trade and financial embargo imposed by the United States on Cuba for 36 years has become the subject of a bitter international dispute, which concerns us all. Cuba has become the martyr of the struggle against the degrading and anachronistic neocolonial system of the late twentieth century. Against this small country, which poses no threat to the security of its large neighbour to the north, a cruel and inhuman blockade is being relentlessly intensified. The fact that the Cuban people has decided to exercise its legitimate rights to self-determination and to enjoy its natural resources, in accordance with the spirit of the Charter of the United Nations, in no way constitutes an infringement of international legality. This country is being punished simply for having exercised the inalienable and natural right to self-determination.

27. However, sublimely ignoring the resolutions adopted by the General Assembly for five consecutive years, in which the international community roundly condemned the blockade, the United States Congress in its turn passed the famous "Helms-Burton" Act with the aim of completely stifling the Cuban economy and causing the breakdown of internal and external policy through a mass uprising. The Cuban Liberty and Democratic Solidarity Act - to give it its official name - represents a veritable sword of Damocles, not to say an undeclared war, in that it endeavours to overturn the regime by means of enforcement measures. The "plan of action for transition in Cuba" devised by the Washington Administration, which strengthens the sanctions pending the advent of a "democratically elected" Government, is aimed at nothing less than the annexation of the island and the ransoming of its people for billions of dollars. Furthermore, the Act stipulates that the Cuban Government shall clearly move towards a market economy based on law and private ownership and return to United States citizens or undertakings the property nationalized by the Cuban Government since 1959, or pay them compensation (Le Monde diplomatique, February 1997).

28. Through the internationalization of coercive sanctions and the unprecedented infringement of the sovereignty of a third country, the extra-territorial legislation is a double-edged sword. Defying the will of the international community, the successive Governments of the United States have endeavoured to impose on all peoples their implacable desire for domination, their method of production and consumption, their neo-liberal market model and, lastly, their conception of democracy as the sole absolute value.

29. Under the pressure of the invisible hand of Helms-Burton, the bankers of the rich countries are closing their doors to the blockaded island, which has no access to loans from the international financial institutions in order to develop its economy. This discriminatory treatment is the result of the comprehensive blockade, whose perverse effects are reflected in the deterioration of the public health system, the shortage of medicines, and the lack of energy resources, spare parts and other essential items for the production of goods and services.

30. This embargo, imposed by economic and military might against Cuba in the context of the hegemonic policy of the Monroe doctrine, constitutes an instrument of coercion, a return to the cold war, an act which is inhuman, anti-democratic, anti-social, and hence devoid of all legal basis or moral justification in a world in which antagonistic blocs no longer exist.

31. The international community should no longer, in a time of peace and in the light of the political changes which have taken place throughout the world, allow an economic and military Power to endeavour to subjugate a small country and condemn its people to humiliation, starvation and disease, in defiance of the Universal Declaration of Human Rights and in violation of the principles of international law universally recognized by the international community.